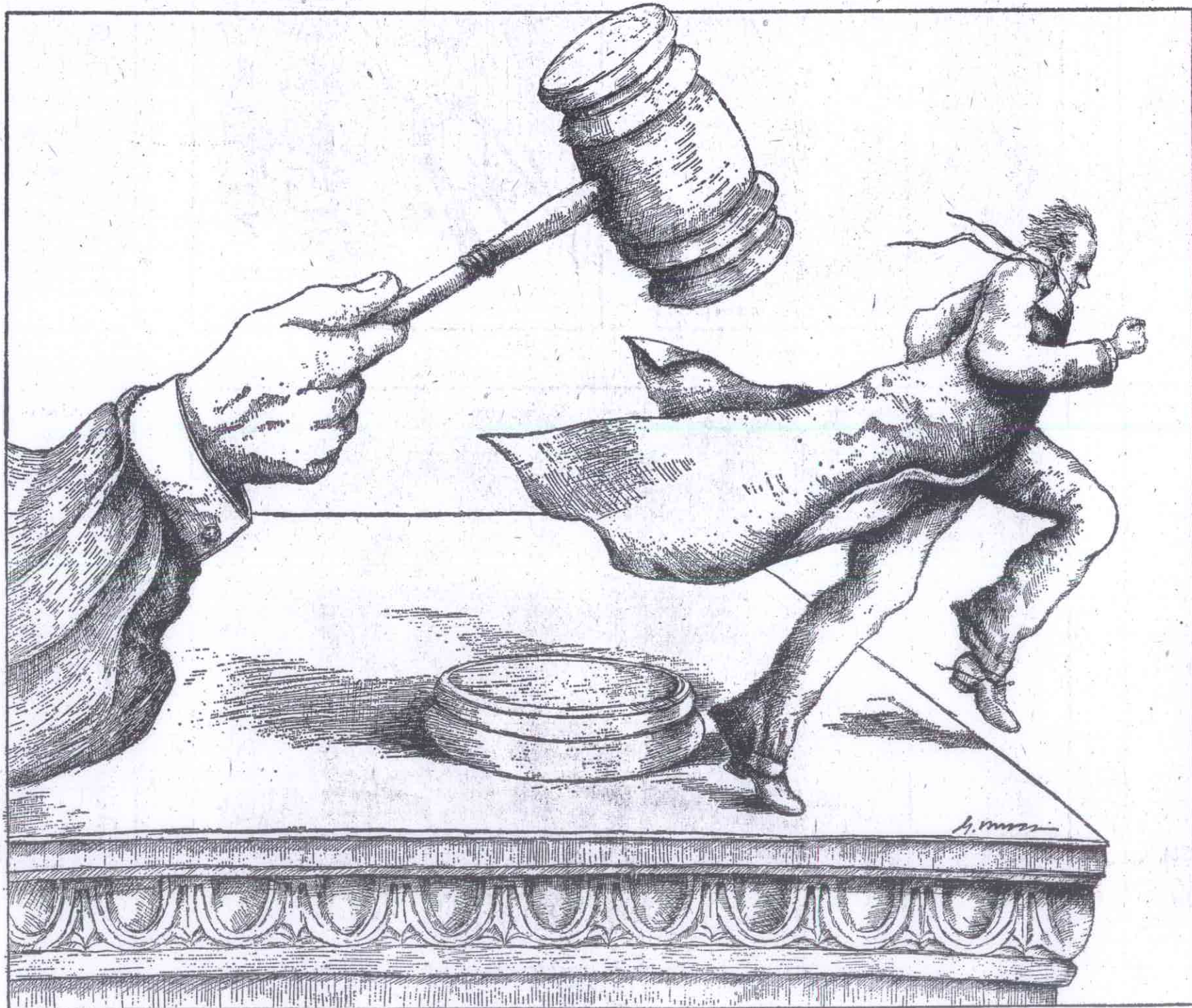


*of Treason, Bribery,
or other high Crimes
and Misdemeanors.*

“The prosecutors, with the gift of hindsight, later calculated that at least 20 witnesses had either lied or withheld information.”

***The Prosecutors: From
To the ‘Saturday Night***

***a ‘Third-Rate Burglary’
Massacre’***



By Lawrence Meyer

HAD IT BEEN almost any other office and any other burglars, the June 17, 1972, break-in would have been the kind of crime a prosecutor and a defense attorney settle over a cup of coffee.

Five men, wearing surgical gloves were caught with burglary tools by three metropolitan policemen inside the prestigious Watergate office building. The burglars had made a forced entry. They were on the premises without permission. Open and shut.

But this was no ordinary burglary and these no seedy second-story men despite the mocking refusal two days later of the presidential press secretary to comment on "a third-rate burglary attempt."

The five men had broken into the offices of the Democratic National Committee. One of them was the security chief for President Nixon's re-election committee, James W. McCord Jr. Four had had contact with the Central Intelligence Agency at some point in their lives.

In its initial stages, however, nothing about the case suggested that it was the first chapter in the unfolding of the greatest political cause celebre in American history. Before the investigation had run its full course, the promising careers of men at the pinnacle of power in the American democracy would be devastated, the executive branch of government would be seized by paralysis as the trail led first into the White House and then into the Oval Office where the chief executive himself would be implicated in a massive obstruction of justice.

The men who tried to cover up the truth feared the worst for themselves and their President, and in the end their worst fears were realized.

But all of this was to come later as the investigation first creaked and groaned along, snaring seven unknowns before the sheer weight of the cover-up transformed the probe into an avalanche whose momentum toppled men and institutions from their secure positions.

Washington is a town with two principal industries—politics and government. If the White House could afford to scoff at a "third-rate burglary attempt," the U.S. attorney for the District of Columbia could not.

ON THE FIRST day, principal Assistant U.S. Attorney Earl J. Silbert was assigned to the case. Silbert, a trim, athletic man with olive skin and thinning black hair, is a graduate of Harvard College and Harvard Law School. He had spent his entire professional career working for the Justice Department, beginning in 1960 when Dwight Eisenhower was preparing to step down from the presidency.

By 1972, Silbert—despite his bookish appearance, formal manner of speech

and Ivy League background—had developed a reputation for toughness in the law-and-order mode so admired by the Nixon administration. A protege of Attorney General John N. Mitchell in the Justice Department, Silbert had played a principal role in drafting the Nixon administration's no-nonsense criminal reform bill for the District of Columbia with its provisions for "no-knock" entry by policemen and preventive detention for suspected criminals.

As principal assistant to U.S. Attorney Harold H. Titus Jr., Silbert already had handled some sensitive cases, but none as delicate as the one he was undertaking.

To assist him, Silbert chose two other veteran prosecutors, Seymour Glanzer and Donald E. Campbell.

At 46, Glanzer was the oldest of the three. A nervous, mercurial man with a habit of chewing his fingers while engaged in passionate argument, Glanzer was chief of the office's fraud unit. He had earned a national reputation for his prosecution of white-collar crimes. Although a graduate of the Juilliard School of Music, Glanzer had later decided to attend New York Law School. When he became part of the Watergate prosecution, he had earned the respect of fellow lawyers for thoroughness in preparation and mastery of the law.

Glanzer's participation in the case began as a part-time affair, as Silbert and Campbell first sought his advice in tracking down and securing documentary evidence. As the case progressed, however, Glanzer's time became increasingly tied up with Watergate and by December it was monopolized to the exclusion of all other considerations.

Campbell, 34, was the only local person of the three prosecutors. A native of Lynchburg, Va., Campbell had attended the University of Maryland for his undergraduate work and for law school. Prematurely bald, Campbell had been a member of the major crimes unit assembled in the U.S. attorney's office to fight organized crime in the nation's capital, especially gambling and narcotics. Campbell, the youngest of the three, was also the most easy-going, affable and relaxed in conversation, with an ability to laugh at himself despite the gravity of the task that had been thrust upon him.

On the face of it, the prosecutors did not have a difficult task. The day the crime occurred they already had five suspects—caught in the act—under arrest.

What made the case more than a burglary was the wiretapping and eavesdropping equipment that the men had with them when they were arrested. Since the wiretap operated through a tiny radio transmitter, it was reasonable to assume that a listening post was nearby.

Two days after the burglary, the FBI found the listening post. It was across the street from the Watergate office building in the Howard Johnson motel. A motel clerk, seeing McCord's photograph in the Sunday paper, had called the FBI to say that McCord had rented rooms in the motel for the past several weeks.

The trail led the FBI from the Howard Johnson's to Alfred C. Baldwin III, a chunky former FBI agent who had been hired by McCord as a bodyguard for Martha Mitchell, whose husband had resigned as Attorney General in March, 1972, to direct President Nixon's bid for re-election.

TWO NOTEBOOKS found while searching two hotel rooms used by the burglars in the Watergate Hotel adjacent to the offices that housed the Democratic headquarters—turned out to belong to two of the men under arrest—Bernard L. Barker and Eugenio Martinez, both of Miami.

The address book contained two entries of special interest to the investigators—one for a Howard Hunt, with the notation "W. House," and the other for a "George," with a phone number that turned out to be George Gordon Liddy's number at the Finance Committee to Re-elect the President, where Liddy was employed as general counsel.

With assistance from Baldwin, who had a promise from the prosecutors that charges would not be pressed against him if he cooperated, the investigation had taken shape. Using photographs, Baldwin had identified Hunt and Liddy as two men introduced to him by McCord who had been part of the scheme to bug the Democratic headquarters.

By mid-July, the FBI had traced \$114,000 that had passed through Barker's Miami bank account to the Nixon re-election committee. Of that sum, \$89,000 had been "laundered" through Mexico in an elaborate attempt to conceal the source of the funds.

But when the prosecutors tried to go beyond Hunt and Liddy to higher officials in the campaign structure and the White House, they ran into a stone wall.

From the day they began their investigation, the prosecutors knew that the case was a no-win proposition. If they turned up no conspirators above Hunt and Liddy, they would be condemned for not pressing hard enough. If they pressed harder, but turned up nothing, they would be condemned for head-hunting by the administration. If they went further and struck paydirt, they

would be heroes, but the risks—personal and professional—were great.

From the outset, though they did not discuss it, the prosecutors followed some basic rules. None of them ever interviewed anyone without another member of the team present. They wanted to hear everything first hand. But more important they harbored a concern that sooner or later someone would apply pressure on them, and they wanted two witnesses to every interview for corroboration.

IN THOSE EARLY months, however, the prosecutors felt little pressure. One exception occurred when they subpoenaed former Commerce Secretary Maurice H. Stans, finance director of the Nixon campaign, to appear before the federal grand jury. Stans informed President Nixon's top domestic affairs adviser, John D. Ehrlichman, who made an irate phone call to Assistant Attorney General Henry E. Petersen to demand that Stans be accommodated. In the end, Stans was allowed to give a deposition at the Justice Department away from the prying eyes of the reporters who lurked around the grand jury room in the federal courthouse, according to Silbert's justification of the decision.

But the investigation stalled at Hunt and Liddy. Liddy, the prosecutors were told, had been given almost \$200,000 to fashion an intelligence gathering apparatus designed to infiltrate radical groups as a means of monitoring plans for violence at the 1972 Republican National Convention. The story, given initially to the prosecutors by deputy Nixon campaign director Jeb Stuart Magruder, was corroborated by Herbert L. Porter, scheduling director of the Nixon campaign.

The prosecutors were also told by Hugh W. Sloan Jr., who had resigned mysteriously from the Nixon campaign in July with the public excuse that his wife was pregnant, that Magruder had tried to convince him to perjure himself by misrepresenting the amount of money Liddy had been given. When confronted by the prosecutors with Sloan's charge, Magruder denied it and a lie detector test sustained him.

In a memo to the Justice Department, the prosecutors stated their doubts about Magruder, which were shared by the grand jury. But Magruder's story held together, supported as it was by Porter and by Mitchell, who made a convincing witness before the grand jury.

The doubts persisted. As Assistant Attorney General Petersen later testified before the Senate Watergate committee, he told Attorney General Richard G. Kleindienst, "Nobody acts innocent." The problem was, Petersen said, "We couldn't translate that." The prosecutors lacked proof. "There were a lot of things the three of us heard that we didn't believe," one of the prosecutors

referred later, "but we had to think in terms of things we could prove."

As the investigation progressed, the prosecutors kept Petersen, their supervisor in the Justice Department, briefed on developments. What the prosecutors did not know was that Petersen was, in turn, briefing White House counsel John W. Dean III. And Petersen apparently did not know that Dean was briefing Magruder, Mitchell, Ehrlichman and White House chief of staff H. R. (Bob) Haldeman. This pipeline from the grand jury was an invaluable aid to the participants in the cover-up being conducted without the knowledge of the prosecutors.

The cover-up was pervasive. The prosecutors, with the gift of hindsight, later calculated that at least 20 witnesses who appeared before the grand jury had either lied or withheld information.

Dean stalled FBI agents who appeared at the White House for routine interviews, keeping them waiting for hours until in frustration they called Silbert who called Petersen who called Dean to prod him into giving the FBI agents access to the persons they wanted to question.

The prosecutors were vaguely suspicious of Dean but still ignorant of the cover-up. "I never dreamed it," one prosecutor said later. His suspicions of persons possibly implicated stopped with Magruder. "Would Mitchell be involved?" he asked rhetorically. "An Attorney General of the United States?"

If they had presented a theory to their superiors suggesting that higher-ups were involved, he said, "We would have been hung in a public square."

As the investigation continued through the long wintery Washington summer, the public clamor for indictments grew. One Justice Department lawyer later defended Silbert's conduct of the inquiry. "Earl was under the most intense pressure to return indictments . . . before the election—quick indictments and the fullest investigation in history. That's impossible, first off.

"Next they [the prosecutors] offered all the conspirators a deal to talk before the election, but none took it. All the evidence about a wider conspiracy was bits and pieces—nothing any sane prosecutor would dare go into court with."

THE INDICTMENTS were returned Sept. 15, 1972, charging seven men—the five caught inside the Democratic headquarters and Hunt and Liddy—with conspiracy, burglary, illegal wiretapping and eavesdropping.

U.S. District Court Chief Judge John J. Sirica, a crusty, blunt-spoken jurist who at 68 was nearing the end of an undistinguished career on the bench, took advantage of court rules to assign the case to himself.

Privately, the prosecutors bemoaned Sirica's decision. Frequently reversed

by the U.S. Circuit Court of Appeals, Sirica showed a predilection for the prosecution that had earned him the nickname "Maximum John." The prosecutors wanted a trial free of judicial error, and with Sirica's shoot-from-the-hip manner of ruling, they feared they would not get it.

Sirica, son of an Italian immigrant, was hard-working and persevering. He had pulled himself up by his bootstraps, through law school into a successful law practice and finally to the federal bench. He was a deep believer in the American dream and was offended by the political pollution that the Watergate break-in symbolized.

AS CAREER PUBLIC servants confronted with a dilemma, the prosecutors decided to chart a cautious course. However sound their decision might have been from a legal point of view, it would raise suspicions about their judgment and conduct that they would never be able to explain to the complete satisfaction of their critics.

Whatever doubts they may have entertained privately, in public they gave the impression that they had the case well in hand, that nothing of significance remained to be uncovered.

At the same time, Petersen fed suspicion about the diligence of the investigation with a speech before an assembly of U.S. attorneys in September, 1972, only nine days after the indictments were returned. In answer to a question, Petersen said that "the jail doors will close" behind the Watergate defendants before they would ever reveal further details about why they had broken into the Democratic headquarters.

In private conversation with reporters, the public impression was reinforced. The prosecutors gave no indication at all that they were suspicious or that they thought the conspiracy went beyond Hunt and Liddy.

The prosecutors turned aside suggestions that the trial could be a vehicle for revealing more about the Watergate affair than had already been made public by the Justice Department. They were confined by rules of evidence to prove the charges in the indictment, nothing more, they argued. But they were responsible for framing the indictment and whatever limitations it imposed on them were limitations that they had played a crucial role in drawing.

At the same time that the prosecutors were leaving the impression that they had traced the conspiracy as far as it went, press reports were suggesting that the Watergate break-in was part of a far more extensive strategy involving high officials both in the Nixon campaign and in the White House.

Throughout the summer and fall, The Washington Post followed the trail of money from the burglars back

to the Nixon re-election committee and into the White House. Despite repeated denials from both the White House and the Nixon re-election committee concerning their involvement in the Watergate break-in, questions were being raised.

A month before the trial began, Sirica let the prosecutors know that he was not satisfied with the narrow course they seemed intent on following. "This jury," Sirica told the prosecutors, "is going to want to know what did those men go into that headquarters for? Was their sole purpose political espionage? Were they paid? Was there financial gain? Who hired them? Who started this?"

IT BECAME a litany with Sirica and in time he came to symbolize the anger, frustration and determination of Americans concerned about the Watergate affair to know the truth about it.

But if Sirica expected the trial of the seven men to produce answers about Watergate, his expectations were misplaced. As the trial began in January, 1973, Hunt—whose wife had been killed in an airplane crash while on a mysterious mission to Chicago—pleaded guilty. Hunt admitted his guilt, but under questioning by Sirica, denied any knowledge pointing to the involvement of others in the Watergate affair.

Five days later, the four men from Miami stepped forward to plead guilty as well. Like Hunt, they professed ignorance about anyone else's involvement. And so the trial—with only Liddy and McCord remaining as defendants—droned on for the rest of the month, through the inauguration of Richard M. Nixon, who had won a stunning landslide re-election victory. Magruder, whom the prosecutors were reluctant to put on the witness stand, appeared as a government witness after the prosecutors decided they had to explain the purported purpose for which Liddy had received Nixon campaign funds.

Silbert, who had been dropping broad hints in public that the conspiracy went no higher than Liddy, told the jury that Liddy and McCord "were off on an enterprise of their own, diverting that money for their own uses."

Summoning up the righteous scorn that a prosecutor reserves for a lawyer who breaks the law, Silbert hammered away at Liddy in the final argument to the jury. Liddy, Silbert told the jury, was "the boss . . . the man in charge, the money man, the supervisor, the organizer, the administrator. That was Mr. Liddy, organizing and directing this enterprise right from the start . . ."

When the jury retired to consider its verdict, it had heard 60 witnesses in 16 days of testimony. After less than 90 minutes, the jury was back with a ver-

dict—guilty on all counts.

SIRICA, who had been so eager for answers that he had taken over the questioning of some prosecution witnesses, was still intent on his mission. Three days after the trial, he told the prosecutors during a post-trial hearing, "I have not been satisfied and I am still not satisfied that all the pertinent facts that might be available—I say might be available—have been produced before an American jury."

Silbert announced his intention to call all seven defendants before the grand jury as soon as they had been sentenced by Sirica.

In the next seven weeks, the focus shifted away from the U.S. courthouse to the Capitol, a half-mile away, to the Senate Watergate committee. If answers were to be found, it was likely that they would be produced there.

A relative quiet settled on the courthouse. The scores of reporters who had crowded in for the trial departed, as did the photographers and television cameramen who had camped outside the courthouse doors.

Silbert turned to administrative problems that had piled up while he had conducted the investigation and prepared for the trial.

Glanzer returned to the fraud unit and to less spectacular white-collar crime.

Campbell, bored but amused with the irony of his situation after participating in a trial of national importance, was assigned to the pool of assistant U.S. attorneys, and given an armed robbery to prosecute. After the excitement of the Watergate trial, Campbell had difficulty getting interested in his work.

In private conversation, Glanzer was dejected about the effect of the trial on the careers of the prosecutors. "We're frozen," he told a visitor. "If they promote us, it will look like a pay-off. If they demote us, it will look like punishment. So we're just like frozen."

When drawn into conversation about the trial, Glanzer railed against any suggestion that the trial had been a disappointment in its failure to throw more light on the conspiracy behind the break-in. We don't have any proof, he would reply heatedly. In a matter of weeks, the trial began fading from public memory.

When criticisms were raised in public about the quality of the Watergate investigation, Justice Department officials were ready with a battery of statistics apparently designed to over-